IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1173 of 2007

Ayyasamy @ Thambam .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police/
Detaining Authority
Coimbatore City. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.M.N.Balakrishnan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner/detenu, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu himself has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to call for the entire records leading to his detention vide detention order

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dated 28.2.2007 on the file of the second respondent in proceedings No.C/19/G/IS/2007, to set aside the same and to direct the second respondent to produce the petitioner, now confined in Central Prison, Coimbatore, before this Court and to set him at liberty.

3.1. The order of detention dated 28.2.2007 was passed on the basis of ground case in Crime No.155 of 2007 for alleged commission of offence under Section 394 of the Indian Penal Code, complaint of which was given by one Shankar. The allegation against the detenu was that on 10.2.2007 at 0900 hours, while the complainant was proceeding to Anna Market at Saibaba Colony, in front of Medical Store, the detenu asked him to stop, threatened him to part with money, and by brandishing a knife forcibly snatched Rs.175/- from his pocket. When the complainant raised an alarm, on hearing the same, the public came to his rescue, but the detenu brandished knife and threatened to kill them and escaped from the scene of occurrence. On seeing the atrocious activities, people ran helter shelter. On the complaint of the said Shankar, a crime, as stated above, was registered and pursuant to the investigation, the detenu was arrested.

3.2. That apart, the detaining authority also took note of the five adverse cases pending against the detenu, viz., Crime Nos.1311, 1466, 1464, 1465 and 1463 of 2006 all registered on the file of Saibaba Colony Police Station for the offences punishable under Sections 457 and 380 read with 75, 379 read with 75 of the Indian Penal Code.

3.3. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an "Goonda" and was kept in custody at Central Prison, Coimbatore.

4. Mr.M.N.Balakrishnan, learned counsel for the petitioner submits that the order of detention was passed by the second respondent mechanically, even before formulating the grounds of detention. To substantiate the said contention, the learned counsel for the petitioner pointed out that the order of detention is dated 28.2.2007, whereas the grounds of detention were formulated only on 5.3.2007.

5. We have perused the records produced before us. It is apparent on the face of the records that the grounds of detention were formulated only on 5.3.2007, whereas the order of detention was passed on 28.2.2007, which, in our considered opinion, is not possible. Therefore, even before the formulation of the grounds of detention, the detention order was passed, which vitiates the order of detention.

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For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 28.2.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The Commissioner of Police
Coimbatore City, Coimbatore.

3.The superintendent,
Central Prison, Coimbatore.

4.The Joint Secretary to Government,
Public (Law & order) Fort st George,
Chennai.

5. The Public Prosecutor
High Court, Madras.

BVR (co)
sg 23/11/07

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